



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/596,797

04/26/2007

Bodo Gerold

149459-110071

1514

25207 7590 03/18/2010
BARNES & THORNBURG LLP
Suite 1150
3343 Peachtree Road, N.E.
Atlanta, GA 30326-1428

EXAMINER

PEPITONE, MICHAEL F

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

03/18/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent-at@btlaw.com

Information Disclosure Statement

The information disclosure statement filed 3/1/10 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered [See MPEP § 609.04(b)].

Response to Amendment

Proposed amendment will not be entered because new claims 23-24 would require further search an/or consideration.

While arguments to the not entered amendments will not be addressed below, applicant's arguments pertaining to the finally rejected claims will be discussed for further clarification.

Response to Arguments

Applicant's arguments filed 3/1/10 have been fully considered but they are not persuasive. The rejection of claims 1-3, 5, 7-9, 11-12, 14, 16-18, and 20-21 based upon Heath (US 5,725,570) is maintained for reason of record and following response.

Heath (US '570) discloses a radiopaque stent filament (8:30-49) having an outer core of a superelastic alloy (NiTi alloy {nitinol}, copper-zinc -aluminum alloy (7:1-30) {p CuZnAl} {base component} and an inner core of a radiopaque element (tantalum, iridium) (7:31-49) {see Office action mailed 12/30/09}.

Regarding the biodegradability of NiTi, Applicants' specification defines biodegradability as at least partial degradation in the living organism occurring over time due to chemical, thermal, oxidative, mechanical, or biological processes {see Applicants' specification (¶ 15)}. El Feninat *et al.* [*Adv. Eng. Mater.* **2002**, 4, 91-104.] provides evidence of nickel ion

Art Unit: 1796

release from NiTi {nitinol} implants, as well as surface corrosion of nitinol implants (pg. 97-99; section 4); i.e. nitinol (NiTi) undergoes at least partial degradation {nickel ion release, surface corrosion} during implantation {nitinol biodegrades}. Furthermore, White (US 7,331,993) provides evidence for biodegradable Nitinol {NiTi} (5:9-10).

Applicants' arguments (pg. 8, ln. 3-25) regarding the references included in the information disclosure statement filed 3/1/10 will not be addressed as the information referred to therein has not been considered {see above}. However, it is noted that applicant confirms Nitinol demonstrates a degree of bio-corrodibility/degradability (see remarks; pg. 8, ln. 16-17); i.e. Nitinol biodegrades. The instant claims recite a biodegradable alloy, whereas applicant appears to present arguments regarding the amount of biodegradation.

Regarding copper-zinc-aluminum alloys {CuZnAl}, claim 3 recites the biodegradable component comprises one or more biodegradable elements selected from the group consisting of magnesium, iron, and zinc; therefore the CuZnAl alloy, which contains zinc (Zn), a biodegradable element as defined in claim 3, meets the claim limitation {i.e. the alloy contains the biodegradable element zinc}.

While arguments regarding the rejection of claims 11-15 and 20-22 based upon Meyer-Lindenberg *et al.* (WO 02/100452) {Meyer-Lindenberg *et al.* (US 2004/0241036) was used as the English translation} were not presented, the rejection is maintained as applicants' arguments regarding Meyer-Lindenberg *et al.* (WO 02/100452) have been sufficiently addressed in the Office action mailed 12/30/09.

Art Unit: 1796

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL PEPITONE whose telephone number is (571)270-3299. The examiner can normally be reached on M-F, 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MFP
10-March-10

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796